

(2) Whether claimant is entitled to temporary total disability compensation pending the receipt of Dr. Blaty's report.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purpose of preliminary hearing, the Appeals Board finds as follows:

(1) K.S.A. 44-516 states:

"In case of a dispute as to the injury, the director, in the director's discretion, or upon request of either party, may employ one or more neutral health care providers, not exceeding three in number, who shall be of good standing and ability. The health care providers shall make such examinations of the injured employee as the director may direct."

Respondent alleges claimant was referred to Dr. VanGallera, Dr. Mills, and Dr. Lynch, all under the authority vested in the Administrative Law Judge under K.S.A. 44-516. A review of the record indicates the referral to Dr. VanGallera by Judge Jackson on December 15, 1992, was for purpose of treatment, with Dr. VanGallera being the authorized treating physician under K.S.A. 44-510. As this would not constitute an independent medical examination under K.S.A. 44-516, the referral by Judge Barnes to Dr. Blaty would not exceed the limitations set forth in K.S.A. 44-516.

The respondent further alleges the referral by Dr. VanGallera to Dr. Toohey would constitute an additional independent medical examination. K.S.A. 44-510 places no limit on the number of authorized doctors attending to the claimant and, once a doctor is authorized, all referrals by that doctor will continue as authorized medical treatment. Until such time as the specific authorization is removed, the referral by Dr. VanGallera would simply be a continuation of the ongoing medical care under K.S.A. 44-510. This also would not violate the limitations of K.S.A. 44-516.

Respondent further alleges that the respondent's and claimant's agreement to refer claimant to Dr. Eyster would constitute an independent medical examination under K.S.A. 44-516. As K.S.A. 44-516 is specific in that the Administrative Law Judge is authorized to appoint three neutral health care providers, a doctor agreed to between a claimant and a respondent with no action required on the part of the Administrative Law Judge would not constitute an independent medical examination under K.S.A. 44-516. The Appeals Board finds the Administrative Law Judge did not exceed her jurisdiction in ordering an IME with Dr. Lawrence Blaty for the reasons stated above.

(2) K.S.A. 44-551 limits the rights of a party to appeal from a preliminary order to situations where it is alleged that the Administrative Law Judge exceeded his or her jurisdiction in granting or denying the relief requested at the preliminary hearing. K.S.A. 44-534a allows appeals from a preliminary hearing for specific jurisdictional issues regarding whether the claimant suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or timely claim made, or whether certain defenses apply.

The Appeals Board has ruled the Administrative Law Judge did not exceed her jurisdiction in ordering the independent medical examination with Dr. Blaty. The Administrative Law Judge's decision regarding the ordering of temporary total disability compensation, which does not fall under the specific jurisdictional issues listed under

K.S.A. 44-534a, would not be an issue reviewable by this Appeals Board from an appeal of a preliminary hearing. Under the facts and circumstances listed herein, the Administrative Law Judge retains jurisdiction over the Preliminary Hearing Order and the Appeals Board will not review the order regarding temporary total disability.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes of June 16, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of August, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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